

**Application No. 10/063937**  
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**Amendment**  
**Attorney Docket No. S63.2B-10447-US01**

**Remarks**

This Amendment is in response to the Office Action dated August 11, 2005. In the Office Action claim 36 was rejected under 35 USC 112, first paragraph. Claim 36 was rejected under USC 102(a) as being anticipated by Jang. Claims 1-2, 4-5, 7, 9-10, 13-18, 23-24, 26-28, 34 and 35 were rejected under 35 U.S.C. 103(a) as being unpatentable over Wolinsky in view of Erbel. Claims 8 and 22 were rejected under 35 U.S.C. 103(a) as being unpatentable over Wolinsky in view of Erbel. Claim 6 was rejected under 35 USC 103(a) as being unpatentable over Wolinsky in view of Erbel and further in view of Barone (USPN 6,613,078). Claim 25 was rejected under 35 USC 103(a) as being unpatentable over Wolinsky in view of Erbel and further in view of Thornton et al (USPN 6,551,350). Claim 36 has been canceled without prejudice or disclaimer. Applicant will address the rejections under paragraph headings consistent with the numbering of the paragraphs in the Office Action.

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Claim 36 was rejected under USC 102(a) as being anticipated by Jang (USPN 6,241,760). For purposes of expediting allowance of this application, claim 36 has been canceled without prejudice or disclaimer thereby making the rejection moot. Applicant maintains the right to pursue the content of claim 36 in a continuation application.

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Claims 1-2, 4-5, 7, 9-10, 13-18, 23-24, 26-28, 34 and 35 were rejected under 35 U.S.C. 103(a) as being unpatentable over Wolinsky (USPN 6,730,116) in view of Erbel et al (US 2004/0116998). Applicant disagrees with this rejection. Wolinsky does not teach a plurality of interconnected struts having curved regions which *curve about* the first and second regions.

Nevertheless, for purposes of expediting allowance of this application, claim 1 has been amended to recite "each curved region having a first end and a second end with a middle portion therebetween, the first end and the second end being more proximal to the special strut than is the middle portion". Wolinsky does not teach this limitation as either the first or second end is further away from the special strut than any portion of curved or middle portion. Erbel does not provide this missing teaching nor is this teaching suggested in either Wolinsky or Erbel.

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Thus, Applicant asserts amended claim 1 is allowable over the references and that claims 2, 4-10, 13-15, and 34-35 are allowable for at least the reason that they claim dependence on claim 1 which is believed to be in condition for allowance

Applicant respectfully requests that the 103(a) rejection of claim 1 and claims 2, 4-10, 13-15, and 34-35 dependent thereof be withdrawn.

Regarding claims 16-18 and 22-25, independent claim 16 recites "a plurality of struts of the serpentine band adjacent one side of the special strut having *complementary* shapes thereto and another plurality of struts of the serpentine band adjacent another side of the special strut having *complementary* shapes thereto". This plurality of struts is not taught or suggested in Wolinsky, Erbel, or their combination. As discussed above portion 21 of Fig. 3 in Wolinsky is an inflection point. Such a shape is not a complementary shape to the marker on the special strut. In fact these inflection points are found in identical struts that are far removed from the special strut. Items that have a complementary shape match one another. Wolinsky simply does not teach a plurality of such struts nor can this teaching found in Erbel. Thus, Applicant asserts that claim 16 is allowable over the references and that claims 17-18 and 22-25 are allowable for at least the reason that they claim dependence on claim 16 which is believed to be in condition for allowance

Applicant respectfully requests that the 103(a) rejection of claim 16 and claims 17-18 and 22-25 dependent thereof be withdrawn.

Regarding claims 26-28, the Office Action asserts that the special struts are designated as the struts that are defining the periphery of the cover and are special because they serve the "special" purpose of defining the cover. However, this does not address the actual language of claim 26.

Claim 26 recites "each special strut having a radiopaque marker...wherein the special struts are located only in intermediate serpentine bands". A special strut therefore must have a radiopaque marker, not just be special because they define the cover. Additionally, Wolinsky shows markers at the end-most serpentine bands of the stent. Wolinsky does not show markers in the intermediate bands of the stent. Because of the configuration of the Wolinsky stent and, in particular, the shape of the markers and the presence of the many connectors between adjacent bands, one of ordinary skill in the art would not be expected to include the

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markers of Wolinsky in any other region of the Wolinsky stent other than the end-most serpentine bands. Erbel does not supply the motivation for any such modification. Therefore, claim 26 and claims 27-28 dependent therefrom are patentable over the proposed combination of Wolinsky and Erbel.

Applicant respectfully requests that the 103(a) rejection of claim 26 and claims 27-28 dependent thereof be withdrawn.

Regarding claims 13 and 14, Applicant asserts these claims are allowable for at least the reason that they claim dependence on claim 1 which is believed to be in condition for allowance.

Regarding claims 8 and 22 and because claims 1 and 16 are believed to be in condition for allowance, Applicant asserts these claims are allowable for at least the reason that they claim dependence on claim 1 and claim 16 respectively.

Claim 6 and claim 25 are believed to be in condition for allowance for at least the reason that they claim dependence on claims believed to be in condition for allowance.


#### **Conclusion**

In light of the above comments, claims 1-2, 4-10, 13-18, 22-28, and 34-35 are believed to be in condition for allowance. Notification to that effect is respectfully requested.

Respectfully submitted,

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